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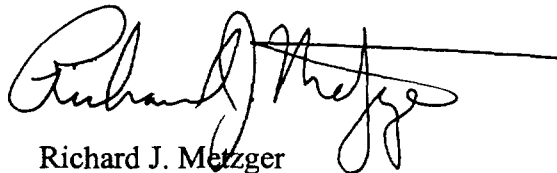
Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M St., N.W.  
Washington, D.C. 20054

Re: Implementation of the Local Competition Provisions in the  
Telecommunications Act of 1996; CC Docket No. 96-98;  
CCB/CPD No. 97-30; CC Docket Nos. 98-79; 98-103; 98-161; 98-168

Dear Ms. Salas:

On October 27, 1998, Cronan O'Connell and Tom Cohen on behalf of ALTS, and myself on behalf of Focal Communications, spoke to Jim Casserly of Commissioner Ness's office concerning the issue of reciprocal compensation for local calls to ISPs. We focused upon the upcoming DSL order from the Commission, and requested that the order contain the particular language shown in the attachment in order to insure that existing interconnection contracts were not disrupted.

Sincerely,



Richard J. Metzger

cc: J. Casserly

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## **HOW TO ASSERT INTERSTATE JURISDICTION OVER DSL TARIFFS WITHOUT IMPAIRING EXISTING INTERCONNECTION CONTRACTS**

ALTS understands the Commission is contemplating asserting Federal jurisdiction over the pending DSL tariffs, but that the Commission does not want its action to disrupt existing contracts between incumbents and new entrants for the exchange of traffic. ALTS appreciates the Commission's concern about this important issue, and hereby proposes language that will insure existing contracts are unaffected by the Commission's action. ALTS believes this language also fully preserves the Commission's flexibility to address the appropriate regulatory and cost recovery treatment of ISP traffic while also preserving Commission prerogatives with respect to facilities used to connect to ISPs,<sup>1</sup> and to guide the negotiation and approval of future interconnection contracts.

***First***, the order should include a finding that none of the pending tariffs meets the statutory definition of "exchange access": **"While we have found that these tariffs are properly tariffed in the interstate jurisdiction, they do not constitute 'exchange access' as defined in section 147(16) because they do not originate or terminate any 'telephone toll services' (see BellSouth Comments at 17, and U S WEST comments at 2)."**

***Second***, the order should also include the following findings, depending upon the particular theory of interstate jurisdiction adopted by the Commission:

*If the Commission relies upon the "jurisdictionally mixed" nature of the traffic:*

**"We also find that our assertion of jurisdiction over these tariffs does not alter the regulatory treatment of circuit-switched services carrying traffic to ISPs, where we have looked to the states for many years to set rates and supervise carrier-to-carrier compensation. The Eighth Circuit recently upheld our conclusion that the overall costs of such dial-up calls are reasonably recovered at the present time through a combination of intrastate end user rates, and interstate rate elements such as the SLC (*Southwestern Bell v. FCC*, 153 F.3d 523, 543 (1998)). The traffic in the tariffs before us here utilizes facilities that are very different from dial-up traffic, namely DSL loop technology in conjunction with ATM transport, and thus poses entirely distinct cost recovery issues best addressed by federal tariffing. Accordingly, our decision to exercise active tariff authority over the present filings while leaving undisturbed the existing regulatory**

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<sup>1</sup> See *Advanced Wireline Services*, CC Docket No. 98-147.

environment under which states set the rates for dial-up calls to ISPs and supervise existing contracts among the carriers handling this traffic, is fully within the broad discretion recognized by the Eighth Circuit's order (*id.* at 544; see also the ONA Order's holding that we have discretion to permit provisioning of such facilities pursuant to state tariff), and does not alter any decision the states have made with respect to reciprocal compensation for those calls. Our determination of the jurisdictional nature of this traffic does not affect validity of these decisions. To the extent we wish to examine any part of this system in the future, including the negotiation and regulatory oversight of future interconnection contracts, we will address that matter in a separate proceeding."

*If the Commission relies upon a "single call" theory:*

"We also find that our assertion of jurisdiction over these tariffs does not alter the regulatory treatment of circuit-switched services carrying traffic to ISPs, where we have looked to the states for many years to set rates and supervise carrier-to-carrier compensation. And even if our assertion of jurisdiction over the present traffic were applicable to dial-up traffic, we hereby expressly decline to exercise any such jurisdiction at the present time. Instead, we leave undisturbed the existing regulatory environment under which states set the rates for dial-up calls to ISPs, and supervise existing contracts among the carriers handling this traffic. Our decision to minimize disruption of state authority is supported by established precedent and policy. For example, in Memory Call, 7 FCC Rcd 1619 (1992), where the state action directly conflicted with our policies, we carefully limited our exercise of jurisdiction to the proposed state-ordered "freeze" on the provisioning of an enhanced service, but we made no changes to the state's authority over carrier provisioning of the enhanced service involved. Where the states are implementing our policy or acting consistently with our policy, as is the case here, we do not attempt to supplant the exercise of state authority. To the extent we wish to examine any aspect of state supervision of dial-up calls to ISPs in the future, including the negotiation and regulatory oversight of future interconnection contracts, we will address that matter in a separate proceeding."

*If the Commission replies upon its Title I authority over information services:*

"We also find that our assertion of jurisdiction over these tariffs does not alter the regulatory treatment of circuit-switched services carrying traffic to ISPs, where we have looked to the states for many years to set rates and supervise carrier-to-carrier compensation. Many policy factors that support our assertion of our Title I jurisdiction here (such as the need for a

**national policy in order to encourage investment in new technology) have little application to existing circuit-switched technology, where investments have largely already been made, and services carrying traffic to ISPs represent only a portion of circuit-switched calls. Accordingly, we expressly decline to alter any aspect of the existing regulatory environment under which states set the rates for dial-up calls to ISPs, and supervise existing contracts among the carriers handling this traffic, or any decisions that the states have made with respect to the foregoing. Our determination of the jurisdictional nature of this traffic does not affect the validity of these decisions. To the extent we may wish to examine any part of this system in the future, including the negotiation and regulatory oversight of future interconnection contracts, we will address that matter in a separate proceeding."**

Because of the likelihood that incumbent providers will attempt to misuse a jurisdictional finding by this Commission in an effort to overturn existing interconnection contracts as they have been upheld by state agencies, ALTS respectfully but urgently requests that the above language be included in the Commission's order.